IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 701 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKKAR DHARANDAS KARAMCHAND (SINCE DECEASED)
THROUGH HIS HEIRS

Versus

ZAVERI RAMESHCHANDRA JETHALAL

Appearance:
MR DF AMIN for Petitioners Nos. 1-1/7/5
MR VC DESAI for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 27/04/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated 25th April, 1991 passed by the learned Extra Assistant Judge, Mehsana in Regular Civil Appeal No.43/1988, the respondents, defendants in Regular Civil Suit No.38/1980

have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

The premises in question is a 'Dehlu' (originally a residential premises) situated at Patan. Under the rent note dated 7th December, 1970 (Exh.46) the said 'Dehlu' (hereinafter referred to as "the suit premises") was leased to the defendant for a period of 11 months and 5 days for the rent of Rs.138=00. Under the said rent note the defendant agreed to pay the rent every month and to handover the possession of the suit premises on expiry of the specified period. He agreed that he had no right to sublet the suit premises or to sale the goodwill. He agreed to pay the taxes of the Municipality and the Government. The said rent note specifically referred to the existing latrine constructed on the platform ('otla').

The plaintiff instituted Regular Civil Suit No.38/1980 in the Court of Civil Judge (J.D.), Patan for recovery of possession of the suit premises on the grounds that the defendant was the tenant in default as he was in arrears of rent since 31st May, 1978; that for the purpose of business of bakery the defendant had made construction of permanent nature in the suit premises and that had caused damage and wastage to the suit premises and for recovery of arrears of rent due. Pending the suit the defendant passed away. His heirs and legal representatives, the present petitioners were substituted as defendants.

The learned Civil Judge, by judgment and order dated 29th February, 1988, partially decreed the suit in favour of the plaintiff. The defendant was directed to pay the agreed rent of Rs.138=00 i.e. Rs.11=50ps. per month since 1st June, 1978 but dismissed the suit for recovery of possession of the suit premises.

Feeling aggrieved, the plaintiff preferred the above referred Regular Civil Appeal No.43/1988 in the Court of District Judge, Mehsana. The appeal was heard and decided by the learned Extra Assistant Judge, Mehsana. The lower appellate Court, by impugned judgment and order dated 25th April, 1991, allowed the appeal and passed decree for recovery of possession of the suit

premises. Feeling aggrieved, the defendants have preferred the present Revision Application.

Learned advocate Mr.Amin has submitted that in so far as the allegations of arrears of rent and subletting are concerned, neither of the Courts below has believed the same. He has submitted that it has been proved on record that the defendant had taken a partner to start a bakery in the suit premises. After retirement of the said partner the defendant and his sons continued to manage the bakery and carried on the business. He has submitted that the decree for possession has been passed on the sole ground that the defendant had made alterations and had caused damage and wastage to the suit premises. He has submitted that it was alleged that the defendant had removed the latrine existing on the platform in the front of the house; that he had removed the slops and the steps at the entrance; that he had lowered the flooring and the doors at the entrance. The shutters of the doors were cut into pieces and the doors were replaced by four shutters and hinges. On the 'otla' in the front the defendant had placed a ladder and for placing the ladder he had removed the construction in the upper storey. The flooring of the room was lowered to facilitate construction of a furnace for baking and had placed a chimney through the ceiling of the lower storey and the roof over the upper storey of the house. The defendant had placed a ventilator over the door in the front. He has submitted that none of the alleged changes was proved by evidence on record. Except that, the defendant had constructed a furnace in the room and a chimney over the furnace. He has submitted that neither the construction of the furnace nor of the chimney would cause any damage or wastage to the suit premises. The furnace and the chimney can be removed at any time and the flooring and the roof can be repaired in the original shape. He has submitted that it has come on record that the suit premises was very old. The defendant had made alterations to make it tenantable and thus had made some improvement to the suit premises. He has submitted that the existence of the latrine has not been proved at all. Even otherwise, the removal of latrine would not amount to wastage to the suit premises and was only for the improvement to the suit premises. In support of his argument, he has relied upon the pleadings, the panchnama (Exh.49), the evidence of the plaintiff (Exh.45), the evidence of the defendant No.1/2 (Exh.62) and the evidence of the panch witness (Exh.79).

The Revision Application is contested by the learned advocate Mr.Desai. He has submitted that the

totality of the changes made by the defendant would certainly amount to wastage of the suit premises. In fact, identity of the suit premises has been changed by the alterations made by the defendant. It does necessarily amount to causing wastage of the suit premises. The plaintiff is, therefore, entitled to a decree for eviction as envisaged by Sections 13(1)(a) and 13(1)(b) of the Rent Act. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Mohan Amba Prasad Agnihotri and others v/s. Bhaskar Balwant Aher (Dead) through L.Rs. [AIR 2000 SC 931].

On perusal of the evidence, particularly the rent note (Exh.46), the panchnama (Exh.49), the evidence of the plaintiff (Exh.45) and the evidence of the defendant (Exh.62), it is proved that the suit premises did have a latrine constructed on the platform ('otla') outside the house. The defendant has removed the said latrine and has placed ladder for approaching the upper storey of the house and for that purpose he has removed part of the construction on the upper storey. The defendant has admittedly constructed a furnace in the middle of the room and has placed a chimney through the ceiling of the room and the roof of the upper storey room. The defendant has also altered the appearance of the suit premises by altering the entrance to the room; has replaced the original shutters of the door by four pieces of shutters; has removed the ventilator from the shutter and has placed a ventilator above the door frame. I do not agree with Mr.Amin that the said changes were for the betterment of the suit premises and did not cause any damage to or wastage of the suit premises. Undoubtedly, as submitted by Mr.Desai, the suit premises has lost its identity. Removal of latrine would certainly tantamount to wastage of the property which should entail a decree for eviction.

In the above referred matter of Mohan Amba Prasad Agnihotri and others the Supreme Court had an occasion to deal with a similar situation and the same statutory provisions namely Section 13(1)(a) of the Rent Act and Section 108(o) of the Transfer of Property Act, 1882. In the said matter, the tenant had taken the property on lease for running a motorcycle workshop. He was found to have stored the spare-parts of the motorcycle in the backyard, in the passage and also on the roof. The Hon'ble Court held that the act of the tenant amounted to imprudent use of the suit property. In the present case, as discussed hereinabove, the acts of the defendant did cause damage and wastage to the suit premises. Though

Mr.Amin has vehemently argued that unless an expert opined, the alleged alterations cannot be said to have caused damage or wastage to the suit premises. I do not agree that an expert's opinion was required to establish the damage to or wastage of the suit premises. In my opinion, the removal of latrine in itself would amount to wastage of the suit premises. The acts of the defendant in breaking open the ceiling for placing a ladder or putting a chimney from the ceiling and the roof of the room would undoubtedly cause damage to the suit premises for which no expert's opinion is required. It is true that any damage caused to the suit premises can be repaired as and when required and the suit premises can be restored to its original form. That should not absolve the defendant from his liability to use the suit premises prudently without causing any damage or wastage to the suit premises.

In view of the above discussion, the Revision Application is dismissed with cost. Rule is discharged. Interim relief is vacated.

At this stage, Mr.Desai has submitted that against the finding with respect to eviction on the ground of the arrears of rent recorded by the lower appellate Court, the plaintiff had preferred Civil Revision Application No.67/1993. The said Civil Revision Application was disposed of by this Court (Coram: K.G.Shah, J.) on 11th February, 1994. The Hon'ble Court observed that, "the petitioner would be entitled to challenge the very finding which is sought to be challenged in this Revision Application, in the Revision Application No.701/1991 filed by the respondents and, therefore, I think there is no use admitting this Revision Application." He has submitted that the defendant did not pay the amount of rent due within one month of the receipt of the notice of demand as envisaged by Section 12(3)(a) of the Rent Act, nor did he pay such amount on or before the first day of hearing of the suit as envisaged by Section 12(3)(b) of the Rent Act. The decree for eviction was, therefore, inevitable.

As this Revision Application is dismissed, I have not examined the question of arrears of rent.

(Ms. R.M.Doshit, J.)

/sakkaf